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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>BRANDEN LEE SANFORD,<br>Defendant and Appellant. | E070143<br>(Super.Ct.No. RIF1800166)<br>OPINION |

APPEAL from the Superior Court of Riverside County. Michael B. Donner, Judge. Affirmed in part; reversed in part.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Melissa Mandel, Meredith White, and Mary Katherine Strickland, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Branden Lee Sanford, pled guilty to pimping (Pen. Code, § 266h, subd. (a); count 1),[1] pandering (§ 266i, subd. (a); count 2), and human trafficking (§ 236.1, subd. (b); count 3). Pursuant to his plea agreement, the court sentenced defendant to an aggregate term of 14 years of incarceration. The court issued a criminal protective order (CPO) pursuant to section 136.2 as to both the victim and defendant's wife, his codefendant. On appeal, defendant contends the court erred in imposing the CPO as to his wife. We reverse the CPO as to defendant's wife. In all other respects, the judgment is affirmed.

## I. FACTUAL AND PROCEDURAL HISTORY

The People charged defendant and his wife by criminal complaint with pimping (§ 266h, subd. (a); count 1) and pandering (§ 266i, subd. (a); count 2). The People also charged defendant with human trafficking (§ 236.1, subd. (b); count 3) and alleged defendant had suffered a prior strike conviction (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). Defendant pled guilty as recounted above. In return, as provided in the plea agreement, the prior strike conviction allegation was dismissed and defendant was sentenced to the midterm of 14 years on count 3, and the low terms of three years, concurrent on counts 1 and 2. Defendant's wife pled guilty to added counts of misdemeanor aiding prostitution (§ 653.23, subd. (a)(1); count 4) and felony human trafficking (§ 236.1, subd. (a); count 5).

[1] All further statutory references are to the Penal Code.

Defendant admitted he "willfully, unlawfully, and knowing [the victim] . . . to be a prostitute, solicit[ed] and receive[d] compensation for soliciting for said prostitute, and live[d] and derive[d] support and maintenance in whole and in part from the earnings and proceeds of said person's prostitution and from money loaned in advance to and charged against said prostitute by a keeper, manager, and inmate of a house and other place where prostitution was practiced and allowed." He admitted "willfully and unlawfully procur[ing] [the victim] . . . for purposes of prostitution and by promises, threats, violence, and by device and scheme, cause[d], induce[d], persuade[d], and encourage[d] [the victim] to become a prostitute." Defendant finally admitted he "willfully and unlawfully deprive[d] and violate[d] the personal liberty of [the victim] . . . with the intent to effect and maintain a violation of Penal Code sections 266, 266h . . . ."

At the sentencing hearing, the court issued a 10-year no contact CPO as to the victim. Defense counsel objected because defendant had a child with the victim and wished to have a relationship with the child. The court responded that defendant could work out any issues with respect to visitation with their child in the family law court.

The court then noted: "And that occurred yesterday with respect to the codefendant that was here as well, who told me that—she told me that he was pimping her out as well while she was pregnant. So it's a no-contact order, and that's what she said to me." "The woman that I spoke to that I'm referring to was your codefendant. Yesterday she told me that you pimped her out when she was pregnant. She said that you

were her husband." The People responded that they could add defendant's wife to the CPO.

Defense counsel objected, observing that since they were married she was "pretty sure [defendant's wife] would not be asking for that." The court replied: "So when I hear that a gentleman has pimped out, to use the phrase that is probably the easiest to understand, his wife while she's pregnant, I have absolutely no sympathy for that type of behavior. [¶] So I'm going to add to the criminal protective order [codefendant] . . . ." The court issued a 10-year CPO as to defendant's wife.

## II. DISCUSSION

Defendant contends the court lacked statutory authority to issue the CPO as to his wife, that insufficient evidence supported the order, and that he was deprived of due process because he had no prior notice that the court would issue the CPO as to his wife. We hold that insufficient evidence supported the court's order to issue the CPO as to defendant's wife.

"Section 136.2, subdivision (i)(1) provides, in pertinent part: 'In all cases in which a criminal defendant has been convicted of a crime involving domestic violence . . . , the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. . . . It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the

safety of the victim and his or her immediate family.' 'As used in the chapter containing section 136.2, subdivision (i)(1), "'[v]ictim' means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state . . . is being or has been perpetrated or attempted to be perpetrated." (§ 136, subd. (3).)' [Citations.]" (*People v. Race* (2017) 18 Cal.App.5th 211, 216-217 (*Race*).) With respect to the issuance of a legally authorized criminal protective order, """"'[w]e imply all findings necessary to support the judgment, and our review is limited to whether there is substantial evidence in the record to support these implied findings.'" [Citation.]' [Citation.]" (*Id*. at p. 217.)

In *Race*, we held that "the term 'victim' pursuant to section 136.2 criminal protective orders must be construed broadly to include any individual against whom there is 'some evidence' from which the court could find the defendant had committed or attempted to commit some harm within the household." (*Race*, *supra*, 18 Cal.App.5th at p. 219 [CPO properly entered against the defendant with respect to his daughter against whom the defendant had not been convicted of a crime, but against whom he was originally charged with committing a lewd and lascivious act].) We further held that "in considering the issuance of a criminal protective order, a court is not limited to considering the facts underlying the offenses of which the defendant finds himself convicted . . . ." (*Id*. at p. 220.) "[I]n determining whether to issue a criminal protective order pursuant to section 136.2, a court may consider all competent evidence before it." (*Ibid*.)

Here, the only "evidence" of defendant's commission of offenses against his wife were the hearsay statements the court related, having heard the previous day from defendant's wife. Defendant's wife's statements themselves are not a part of this record. We hold that this evidence is insufficient to support the CPO with respect to defendant's wife. In *Race*, the evidence supporting issuance of the CPO with respect to the defendant's daughter consisted of the complaint and the police report which the defendant stipulated would form the factual basis for his plea. (*Race*, *supra*, 18 Cal.App.5th at pp. 216, 219.)

We hold that to constitute some competent evidence, any evidence used to support the issuance of a CPO pursuant to section 136.2 against a defendant must consist of an admission by defendant; stipulated to by defendant; be declared under penalty of perjury; appear directly on the record; or have been subjected to some degree of cross-examination by defendant, e.g., preliminary hearing and/or trial testimony. Thus, because the evidence upon which the court relied in issuing the CPO as to defendant's wife met none of these criteria, insufficient evidence supports the issuance of the CPO.[2]

[2] Because we reverse on the basis of insufficiency of the evidence, we find it unnecessary, and decline the invitation regardless, to overrule our holding in *Race* which permits the court to issue CPO's as to victims of crimes of which a defendant was not convicted.

## III. DISPOSITION

The CPO issued against defendant as to his wife is reversed.[3] In all other respects, the judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.

[3] The People may, of course, seek issuance of, and the court may issue, another CPO against defendant as to his wife upon the presentation of some competent evidence as explicated herein.